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of Teachers, AFL-CIO

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VIA ELECTRONIC FILING

April 18, 2018

Roxanne Rothschild
Deputy Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570

RE: RIN 3142-AA12

To the Honorable Chairman and Members of the NLRB:

I write in my capacity as a labor law practitioner who has litigated numerous representation cases in NLRB regions across the country under the 2014 Election Rule.¹ It has been my experience that the current election rules provide for a more fair and transparent process than that which was provided for under the old rules. The current rules allow for a more expeditious resolution of questions concerning representation, while at the same time preserving the rights of all parties to present their positions to the Board in both stipulated and contested cases. I strongly urge the Board to retain the 2014 Election Rule without change.

The 2014 Election Rule provides for a workable mechanism through which employees can make an informed choice on the question of union representation. It has been my experience, and that of my client, the American Federation of Teachers, that the rules have worked well in stipulated election cases, contested cases, as well as cases involving an intervening union. For the benefit of the Board in its deliberations over the future of the 2014 Election Rule, I wanted to flag the following three cases in which I was counsel of record on behalf of AFT affiliates, that in my estimation demonstrate the efficacy of the current election rule under varying circumstances.

¹ See e.g., *PeaceHealth d/b/a PeaceHealth Sacred Heart Medical Center*, 19-RC- 209295 (2017); *Cesar Chavez Public Charter Schools for Public Policy*, 05-RC-199635 (2017); *Benefis Health System, Inc.*, 19-RC-194532 (2017); *New Foundations Charter School, Inc.*, 04-RC-199928 (July 7, 2017); *Paul Public Charter School, Inc.*, 05-RC-194836 (2017); *PeaceHealth d/b/a PeaceHealth Southwest Medical Center*, 19-RC-187163 (2016); *PeaceHealth d/b/a PeaceHealth Southwest Medical Center*, 19-RC-175704 (2016); *PeaceHealth Laboratories*, 19-RC-159879 (2015); *John B. Stetson Charter School*, 04-RC-151011 (May 14, 2015).



1. *John B. Stetson Charter School, 04-RC-151011 (May 14, 2015).*

Upon information and belief, *Stetson* was the first case to go to a unit determination hearing at Region 4 under the 2014 Election Rule. It involved a complex question of whether the Board had jurisdiction over the employer, a Pennsylvania charter school. The RC petition was filed April 27, 2015 before 10 AM and the unit determination hearing was held, as per the 2014 Election Rule, eight days later on May 6, 2015. That eight day period was ample time for both sides to identify witnesses and fully prepare for a day-long hearing on May 6th at the Region 4 offices. The issue of jurisdiction was fully litigated and the Regional Director had discretion, pursuant to the rules, to order briefing, which he did over the union's objection. Briefs were due May 12th and because of the efforts of the excellent career staff at Region 4, a DDE issued on May 14th, which fully explored and considered the jurisdictional issue. The *Stetson* case demonstrates that the 2014 Election Rule provides more than enough time for the parties to prepare and present a complex case and for regional staff to conduct a thorough investigation and evaluation of the parties' arguments. It is also worth noting that this is not a case that ultimately resolved in the union's favor; the union withdrew its petition prior to an election being held.

2. *PeaceHealth d/b/a PeaceHealth Southwest Medical Center, 19-RC-187163 (2016).*

This was a case involving a 900+ person service unit under the Board's healthcare rule. The RC petition was filed by an SEIU affiliate. I was counsel of record for an affiliate of the AFT, which joined the case as a full intervenor. Speaking on behalf of myself and my client, I can attest that the timelines in the 2014 Election Rule presented absolutely no significant challenge to preparing to intervene in this case, despite the fact that the AFT had no prior notice that this petition would be filed. There has been rhetoric from corporate interests and members of the management-side bar that the timelines in the 2014 Election Rule present an unreasonable burden for parties that are "ambushed" by RC petition filings and do not have time to adequately prepare to present their position to the Board. Based on my experience representing an intervening union in this case, I can say unequivocally that there is no merit to these "ambush" allegations. The petitioning organization, intervening union, and management had more than enough time to prepare and enter into a fully informed stipulated election agreement for a very large unit. The intervening union ended up prevailing in a runoff election and is now the certified representative of the service workers at PeaceHealth Southwest Medical Center in Vancouver, Washington.

3. *PeaceHealth d/b/a PeaceHealth Sacred Heart Medical Center, 19-RC- 209295 (2017).*

This case involved a 300+ person technical unit at an acute-care facility in Eugene/Springfield, Oregon conducted pursuant to the Board's healthcare rule. The RC petition was filed November 6, 2017. A stipulated election agreement was entered into on

November 13th, and the election was held in multiple locations on November 28th and 29th. There were twenty-two days between the filing of the petition and the first day of the election. This case is mentioned here because it demonstrates that there is no need for an arbitrarily-set minimum number of days between filing and election, as some corporate and management-side interests have suggested. Upon information and belief, the vast majority of representation cases result in a stipulated election agreement. There are, no doubt, cases in which one party may want to set an election for a date thirty or forty days from filing and if the parties agree to that, there is no barrier to such a timeline. However, as demonstrated by this case, the parties may agree to hold an election as expeditiously as possible considering the circumstances and they should be free to do so.

To conclude, the 2014 Election Rule was enacted by the Board after full APA notice and comment rulemaking in which advocates for workers and management had a full and fair opportunity to raise concerns and argue for their respective positions. We are now nearly halfway through 2018 and it can safely be said that the rules have stood the test of time. The cases discussed above, as well as countless others, demonstrate that the 2014 Election Rule has not created an unreasonably fast process that has tilted the outcome in R cases toward unions in any significant way, as certain corporate and right-wing interests have suggested. Rather, the rules have provided a workable mechanism for deciding questions concerning representation that have allowed even the most complex legal issues to be considered and thoroughly evaluated by the Board.

As General Counsel Robb has often reminded the agency and its constituents, the Board has limited resources. Why waste them on a process to amend the 2014 Election Rule, which has worked well for all concerned?

I respectfully request that the Board maintain the 2014 Election Rule without change. Thank you for your time and consideration of my comments.

Respectfully Submitted,

/Samuel J. Lieberman/

Sam Lieberman
Associate Director
AFT Legal Department

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